

Message Text

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DRAFTED BY: USAEC:DIP:IAEA:ETMCFADDEN

APPROVED BY: OES/SCI/AE:JLBLOOM

USAEC:DIP:DIR:ASFRIEDMAN

USAEC:GC:PNBRUSH

ACDA:CVANDOREN

IO/SCT:FLANCETTI

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FM SECSTATE WASHDC

TO USMISSION IAEA VIENNA PRIORITY

C O N F I D E N T I A L STATE 269453

E.O. 11652: GDS

TAGS: PARM, TECH, IAEA, US

SUBJ: US VOLUNTARY OFFER SAFEGUARDS AGREEMENT

REF: A) IAEA VIENNA 8997; B) IAEA VIENNA 7680

1. CONCUR MISSION RECOMMENDATIONS REFTEL A AND OCTOBER 22 DRAFT
EXCEPT AS INDICATED BELOW.

2. RE ARTICLE 2(A), ASSUME WORD "AND" IN PHRASE "SOURCE AND
SPECIAL FISSIONABLE MATERIAL" IS INADVERTENCE AND SHOULD BE "OR"
TO CONFORM TO PHRASE IN ARTICLE 1(A) AND INFCIRC/153.

3. RE ARTICLE 2(C) AND PARAS 2, REFTELS. IN VIEW IMPORTANCE
OF MAXIMUM POSSIBLE ASSURANCE AGAINST DISCRIMINATION BETWEEN
US FIRMS, WE STRONGLY PREFER NOT INSERTING PHRASE "ENDEAVOR TO".
ALTHOUGH WE UNDERSTAND AGENCY'S CONCERN, WE REQUEST YOU GO
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BACK TO THEM ON THIS POINT.

4. RE ARTICLE 7(B), REF. A PARA 2, REF. B PARA 3. AGENCY SUGGESTION ACCEPTABLE IF CLAUSE "EXCEPT AS PROVIDED FOR IN THIS AGREEMENT" IS INSERTED AFTER "NUCLEAR MATERIAL."

5. RE ARTICLE 12 REDRAFT PER PARA 3 REF A, FOLLOWING COMMENTS:

A. SINCE NOWHERE DOES PRESENT DRAFT AGREEMENT EXPRESSLY PROVIDE FOR US RIGHT TO TRANSFER MATERIAL BETWEEN FACILITIES IDENTIFIED BY AGENCY PURSUANT ARTICLES 2(B) AND 39(B), BELIEVE SUCH PROVISION SHOULD BE INSERTED IN ARTICLE 12(A).

B. REGARDING TRANSFERS TO THOSE FACILITIES NOT REPEAT NOT SO IDENTIFIED WHICH ARE TREATED IN ARTICLE 12(A), TO AVOID MISUNDERSTANDINGS IN EVENT OF TRANSFERS TO DESTINATIONS NOT REPEAT NOT ACTUALLY PART OF UNITED STATES BUT UNDER U.S. JURISDICTION, E.G., PUERTO RICO, RECOMMEND WORDING "WITHIN OR UNDER THE JURISDICTION OF THE UNITED STATES."

C. IN ARTICLE 12(A) SENTENCE BEGINNING "THE APPLICATION OF SAFEGUARDS," RECOMMEND REPLACING "WHICH HAS BEEN IDENTIFIED" WITH "WHICH IS THEN CURRENTLY IDENTIFIED."

D. UNABLE CONCUR IN INCLUSION OF CLAUSE "OR (B) OTHERWISE BECOMES SUBJECT TO SAFEGUARDS." ONLY WAY MATERIAL IN QUESTION COULD AGAIN BECOME SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT WOULD BE AS STATED FIRST PART OF SENTENCE, I.E., BEING PRESENT IN FACILITY IDENTIFIED BY AGENCY. BELIEVE ARTICLE 12 SHOULD TREAT ONLY SAFEGUARDS APPLICATION UNDER THIS AGREEMENT AND THEREFORE RECOMMEND DELETION ABOVE-MENTIONED CLAUSE.

E. PLEASE OBTAIN AGENCY EXPLANATION RELEVANCE OF LAST SENTENCE ARTICLE 12(B) TO THIS AGREEMENT.

F. ARTICLE 12 (A) SENTENCE BEGINNING "IF SUCH WITHDRAWN MATERIAL," RECOMMEND NEXT WORDS "IS WITHDRAWN FOR TRANSFER" INSTEAD OF "HAS BEEN TRANSFERRED."

G. ARTICLE 12(B), SECOND SENTENCE, RECOMMEND DELETION WORDS "AND TRANSFER," SINCE PART II PROVISIONS DO NOT REPEAT NOT REQUIRE REPORTS OF TRANSFERS PER SE BUT OF INCREASES/DECREASES (I.E., WITHDRAWALS) IN MATERIAL BALANCE AREAS.

6. REVISED IN ACCORDANCE ABOVE COMMENTS AND WITH OTHER SLIGHT WORDING MODIFICATIONS, RECOMMEND ARTICLE 12 READ AS FOLLOWS:
ARTICLE 12(A). THE UNITED STATES SHALL HAVE THE RIGHT TO
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TRANSFER NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT BETWEEN FACILITIES IDENTIFIED BY THE AGENCY PURSUANT TO ARTICLES 2(B) AND 39(B). THE UNITED STATES SHALL ALSO HAVE THE RIGHT TO WITHDRAW NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT FROM ACTIVITIES IN FACILITIES IDENTIFIED BY THE AGENCY PURSUANT TO ARTICLES 2(B) AND 39(B), FOR TRANSFER TO OTHER DESTINATIONS WITHIN OR UNDER THE JURISDICTION OF THE UNITED STATES. THE UNITED STATES SHALL NOTIFY THE AGENCY OF EACH SUCH WITHDRAWAL

IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF PART II OF THIS AGREEMENT. IN THE CASE OF EACH SUCH WITHDRAWAL, THE MATERIAL SHALL NO LONGER BE SUBJECT TO

THE APPLICATION OF SAFEGUARDS UNDER THIS AGREEMENT WHEN IT IS SO WITHDRAWN. THE APPLICATION OF SAFEGUARDS UNDER THIS AGREEMENT TO SUCH WITHDRAWN MATERIAL SHALL BE DISCONTINUED UNTIL SUCH TIME AS THE MATERIAL IS PRESENT IN A FACILITY WHICH IS THEN

CURRENTLY IDENTIFIED BY THE AGENCY PURSUANT TO ARTICLE 2(B) OR ARTICLE 39(B). IF SUCH WITHDRAWN MATERIAL IS TRANSFERRED TO AN ACTIVITY WITH DIRECT NATIONAL SECURITY SIGNIFICANCE TO THE UNITED STATES, THE UNITED STATES SHALL ASSURE THE AGENCY THAT THE INTENDED

USE OF THE NUCLEAR MATERIAL WILL NOT BE IN CONFLICT WITH AN UNDERTAKING THE UNITED STATES MAY HAVE GIVEN AND IN RESPECT OF WHICH AGENCY SAFEGUARDS APPLY, THAT THE MATERIAL WILL BE USED ONLY IN A PEACEFUL NUCLEAR ACTIVITY. THE AGENCY SHALL MAINTAIN RECORDS INDICATING EACH SUCH WITHDRAWAL AND, WHERE APPLICABLE, THE RE-APPLICATION OF SAFEGUARDS TO THE WITHDRAWN NUCLEAR MATERIAL. ARTICLE 12(B). THE UNITED STATES SHALL HAVE THE RIGHT TO WITHDRAW NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT FOR TRANSFER TO DESTINATIONS NOT WITHIN OR UNDER THE JURISDICTION OF THE UNITED STATES. THE UNITED STATES SHALL NOTIFY THE AGENCY OF EACH SUCH WITHDRAWAL IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF PART II OF THIS AGREEMENT. IN THE CASE OF EACH SUCH WITHDRAWAL, THE MATERIAL SHALL NO LONGER BE SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT WHEN IT IS SO WITHDRAWN.

7. ARTICLE 18 AND PARA 5 REF A. CONCUR MISSION RECOMMENDATION WE ASSESS LATER THE WISDOM OF ACCEDING TO SECRETARIAT PROPOSAL. IN ANY CASE, PREFER WORD "APPROPRIATE" INSTEAD OF "APPLICABLE" I.E., "BOARD MAY ALSO TAKE, WHERE APPROPRIATE..."

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8. RE ARTICLE 34(B), REF A PARA 4 REDRAFT (WHICH WE NOTE WAS NOT REPEAT NOT INCORPORATED IN COMPLETE OCTOBER 22 REDRAFT SENT AEC BY MISSION) ACCEPTABLE EXCEPT RECOMMEND DELETION WORDS "AND TRANSFERRED" AS SUPERFLUOUS AND INAPPROPRIATE IN LIGHT NEW EMPHASIS ON CONCEPT "WITHDRAWAL" INSTEAD OF "TRANSFER."

9. ARTICLE 40(C), REF A PARA 6. SHARE MISSION VIEW DESIRABILITY PROPOSED ADDITION IN PRINCIPLE, BUT IN LIGHT PRACTICAL IMPLICATIONS FOR U.S. INDUSTRY AEC MUST CONSIDER FURTHER AND ADVISE AFTER PROPOSAL SUBMITTED FORMALLY TO COMMISSION.

10. REF A, PARA 7, CONCUR RETENTION REFERENCES TO OTHER ARTICLES.

11. PARA 8 REF A. AS MISSION INDICATED, U.S. RELUCTANCE TO AGREE TO SAFEGUARDS MEASURES NOT ACCEPTED BY USSR AND UK PERTAINED

TO NEGOTIATION OF REPORTING ARRANGEMENTS SET FORTH IN INFCIRC/207.
IN OUR VIEW, THAT POSITION NOT REPEAT NOT APPLICABLE IN CONNECTION
MORE LIMITED SCOPE OF U.S. OFFER AGREEMENT. BELIEVE SOME FORMULATION
CAN BE DEvised TO MEET AGENCY WISHES REPORTED REF B PARAS 19,
20 AND 24. FOR MISSION CONSIDERATION SUGGEST FOLLOWING ADDITION
AS ARTICLE 69(C): "IDENTIFY AND IF POSSIBLE VERIFY THE QUANTITY
AND COMPOSITION OF THE NUCLEAR MATERIAL SUBJECT TO SAFEGUARDS UNDER
THIS AGREEMENT ABOUT WHICH INFORMATION HAS BEEN PROVIDED IN
ACCORDANCE WITH ARRANGEMENTS WITH THE AGENCY, SUCH AS THOSE SPECIFIED
IN INFCIRC/207."

12. ON BASIS SAME REASONING, SUGGEST FOLLOWING NEW ARTICLE 74(B):
"FOR THE PURPOSES SPECIFIED IN ARTICLE 69(C), THE INSPECTORS SHALL
HAVE ACCESS TO ANY FACILITY IDENTIFIED PURSUANT TO ARTICLE 2(B) OR
39(B) IN WHICH NUCLEAR MATERIAL REFERRED TO IN ARTICLE 69(C) IS
LOCATED." ARTICLES 74(B) AND (C) WOULD THEN BECOME 74(C) AND (D)
RESPECTIVELY. RE SECOND SENTENCE PARA 20 REF B, ASSUME INTENTION
IS THAT PHRASE SHOULD READ "INITIAL REPORTS OR ANY INSPECTIONS
CARRIED OUT IN CONNECTION THEREWITH."

13. RE PARA 24 REF B, IN LINE WITH OUR SUGGESTIONS PARAS 11 AND
12 ABOVE, SUGGEST REVISION ARTICLE 81(A) TO READ: "FOR AD HOC
INSPECTIONS PURSUANT TO PARAGRAPH (C) OF ARTICLE 69, AT LEAST 24
HOURS, FOR THOSE PURSUANT TO PARAS (A) AND (B) OF ARTICLE 69, AS
WELL AS THE ACTIVITIES PROVIDED FOR IN ARTICLE 48, AT LEAST ONE
WEEK."

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14. ARTICLE 79(C), PARA 11 REF A, PREFER FOLLOWING: "CHARACTER-
ISTICS OF THOSE FACILITIES IN THE U.S. FUEL CYCLE WHICH ARE
SUBJECT TO SAFEGUARDS UNDER THIS AGREEMENT, IN PARTICULAR, THE
NUMBER ETC."

15. ARTICLE 89, PARA 12 REF A. NO REPEAT NO OBJECTION.

16. PARA 13, REF A. CONCUR MISSION RECOMMENDATION. SUGGEST
NEW ARTICLE 89 BE REDESIGNATED 89(A) AND INFCIRC/153 PARA 97,
SUITABLY MODIFIED, BE ADDED AS 89(B), WITH REFERENCE TO "ARTICLE
66" IN LIEU OF INFCIRC/153 REF TO "PARAGRAPH 68." KISSINGER

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